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Introducing fairness and transparency for business users of online platforms

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Uber

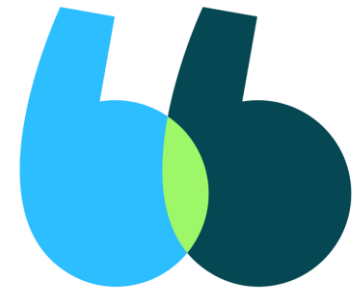
Online platforms



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Online platforms as „access points to the market and consumers”

Online platforms:

- create and shape new markets
- collect, process and edit large amounts of data, creating digital value by accumulating data
- use information and communication technology
- create a network that is more user-friendly when it has more users
- enable new business ventures and creating new strategic relationships

Online intermediation involves a variety of services, like:

- business users advertising
- facilitating communication of business users and consumers and booking
- conducting cash transactions between business users and consumers
- price comparison, etc.

Problems

- significant market power is concentrated on a smaller number of online platforms, which have a large number of users
- success of small businesses is dependent on collaboration with leading online platforms
- imbalance in the bargaining power
- possibility of unfair business practices
- existing legal rules in EU and member states did not provide protection against the specific behaviour of online platforms

EU Regulation 2019/1150

- regulation (EU) 2019/1150 of the European Parliament and of the council on promoting fairness and transparency for business users of online intermediation services was adopted on 20 June 2019 and will apply from 12 July 2020
- regulation is directly applicable in the member states
- another act of unfair competition law in b2b relations?

Objectives

- proper functioning of the internal market
- fairness
- better and increased consumer choice
- protection and contribution to innovation
- increased data sharing
- creation of a common European data space
- fair distribution of surplus among online platforms, business users and consumers

Subjects of protection and geographical scope

- the regulation 2019/1150 regulates online intermediation services in b2b relationships
- direct protection is enjoyed by business users and corporate users of online sites, who have their place of establishment or residence in the union and who, through these online intermediation services or search engines, offer goods or services to consumers located in the union
- regulation is applying irrespective of the place of establishment or residence of the online platforms

Types of services within the scope

- online intermediation services (e-commerce, online software application market places and online social media services)
- online search engine services (search engine providers determine the ranking of websites through which corporate website users offer their goods and services to consumers)

Obligatory legal relationships within the scope

- Contractual relationship between the providers and business users which offer goods or services to consumers should exist if "both parties concerned express their intention to be bound in an unequivocal manner on a durable medium, without an express written agreement necessarily being required"

Terms and conditions

- terms and conditions of providers of online intermediation services need to:
 - be in **plain and intelligible language**
 - **easily available**
 - set out the grounds for decisions to **suspend or terminate** or impose any other kind of **restriction**
 - include information on **any additional distribution channels and potential affiliate programmes**
 - include general information regarding the effects of the terms and conditions **on the ownership and control of intellectual property rights of business users**

- providers of online intermediation services **need to notify** to the business users concerned **any proposed changes** of their terms and conditions
- **the notice period** shall be at least **15 days** from the date on which the provider of online intermediation services notifies the business users
- the right to terminate the contract before the expiry of the notice period
- Consequences - terms and conditions, or specific provisions are null and void

Restriction, suspension and termination

1. Where a provider of online intermediation services decides to **restrict or suspend** the provision of its online intermediation services to a given business user in relation to **individual goods or services** offered by that business user, it shall provide the business user concerned, prior to or at the time of the restriction or suspension taking effect, with a **statement of reasons** for that decision on a durable medium.
2. Where a provider of online intermediation services decides to **terminate** the provision of the whole of its online intermediation services to a given business user, it shall provide the business user concerned, **at least 30 days prior to the termination taking effect, with a statement of reasons for that decision on a durable medium.**

- opportunity to clarify the facts and circumstances in the framework of the internal complaint-handling process
- if it is revoked by the provider of online intermediation services, it shall reinstate the business user without undue delay
- EXCEPTIONS
 - legal or regulatory obligation
 - the business user has repeatedly infringed the applicable terms and conditions
- but, than need to provide the business user, without undue delay, with a statement of reasons for that decision (exceptions)

Ranking

- in terms and conditions the providers of online intermediation services shall set out the **main parameters determining ranking** and the reasons
- providers of online search engines shall set out the main parameters which are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language, on the online search engines of those providers
- they shall keep that description up to date

- others:
 - ancillary goods and services
 - differentiated treatment
 - specific contractual terms
 - access to data
 - restrictions to offer different conditions through other means

Protection

- self regulation
 - internal complaint-handling system
 - mediation
- collective redress
- any such actions should in no way affect the rights of the business users and corporate website users to take judicial action on an individual basis

Conclusion

- a growing need to protect SMEs as weaker market players (The Regulation does not introduce special protection for SMEs, but it clearly aims to protect weaker business entities by binding their stronger partners to a duty of transparency)
- question is whether the Regulation will succeed in achieving its goal and prevent unfair practices of online platforms towards weaker users
- In relation to implementation, it has been missed to define in greater detail, at Union level, uniform rules on individual protection as well as the protection of public law.